

WESTFELDT BROS.

JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 8298]

The Committee on the Judiciary, to whom was referred the bill (H. R. 8298) for the relief of Westfeldt Bros., having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Westfeldt Bros. of New Orleans, La., of all liability to pay to the United States the sum of \$540,540 erroneously levied as increased customs duty on merchandise imported by them.

STATEMENT OF FACTS

The merchandise was erroneously entered and appraised in units of 1 instead of in units of 100. The merchandise consisted of 650 cases of mint wafers. Each case contained 100 cartons, and each carton contained 24 packages. The customs examiner has now stated that it was his intention to report the value of the merchandise as \$1.75 per hundred packages rather than at \$1.75 per package.

The report of the Treasury Department to this committee on an earlier bill indicates that since the assessment of the increased duties on the merchandise is the result of an error in the entered value and in the appraisal by the appraiser of the merchandise, the Department did not oppose favorable action on the earlier bill provided that it would be amended to show the exact amount of the increased duties not to be collected from the importer. This amount is \$540,540. This bill, H. R. 8298, was introduced, which embodied the recommendations of the Department. The committee recommends that the bill be favorably considered.

TREASURY DEPARTMENT.

Washington, July 29, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of June 24, 1955, enclosing copies of a bill, H. R. 5381, for the relief of Westfeldt Bros., and requesting a report of the facts in the case together with an opinion as to the merits of the bill.

The proposed legislation, if enacted, would relieve Westfeldt Bros. from liability for the payment of certain increased duties on a part of an importation covered by New Orleans, La., warehouse entry No. 676, dated October 3, 1945. The merchandise was erroneously entered and appraised in units of 1 instead of in units of 100. The merchandise consisted of 650 cases of mint wafers, each case containing 100 cartons and each carton containing 24 packages. The merchandise was entered by the importers, apparently through inadvertence, at a unit value of \$1.75 per package instead of at a unit value of \$1.75 per hundred packages. The importers claim that the latter value is the correct one and the customs examiner has now stated that it was his intention to report the value of the merchandise as \$1.75 per hundred packages rather than \$1.75 per package. However, on the basis of the examiner's report, the merchandise was appraised at a value of \$1.75 per package and the importer filed no timely appeal for reappraisal by the United States Customs Court. Accordingly, under section 501 of the Tariff Act of 1930 (19 U. S. C. 1501) the appraisement became final and conclusive upon all parties. If a timely appeal had been filed and was successful and assuming the existence of a clerical error in the entered value, relief could have been granted administratively.

Since the assessment of the increased duties on the merchandise in question is the result of an error in the entered value and in the appraisement by the appraiser of merchandise, this Department does not oppose favorable action on H. R. 5381, provided the exact amount of the increased duties not to be collected from the importer is inserted therein. In this connection, the Department is advised by the collector of customs at New Orleans that the amount of increased duties which will be assessed on liquidation of warehouse entry No. 676 as the result of the error in the entered and appraised values of the merchandise will be \$540.540. The Department recommends that such amount be expressed in the bill as the amount which the bill would relieve the importer from paying.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this report to your Committee.

Very truly yours,

H. CHAPMAN ROSE,
Acting Secretary of the Treasury.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C. August 1, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary, House of Representatives,
Washington, D. C.

DEAR MR. CHAIRMAN: In accordance with the request contained in your letter of July 30 for information on H. R. 5381, for the relief of Westfeldt Bros., I am enclosing herewith correspondence from my files furnishing supporting evidence in this case.

I would appreciate the return of this correspondence after it has served its purpose.

Sincerely,

HALE BOGGS,
Member of Congress.

TREASURY DEPARTMENT,
BUREAU OF CUSTOMS,
Washington 25, February 17, 1955.

Hon. HALE BOGGS, M. C.,
House of Representatives,
House Office Building, Washington 25, D. C.

MY DEAR MR. BOGGS: Reference is made to your communication of February 9, 1955 (HB:br), transmitting a letter which you have received from Westfeldt Bros., New Orleans, La., in regard to the contemplated assessment of increased customs duty by the customs authorities at New Orleans, La., in connection with the liquidation of New Orleans warehouse entry No. 676 of October 3, 1945. As indicated in your communication, a similar inquiry was forwarded by you to the Bureau in behalf of W. R. Zanes & Co. of Louisiana, in connection with the liquidation of New Orleans consumption entry No. 3137 of January 29, 1952. This matter was the subject of the Bureau's reply to you of February 14, 1955.

In the instant case, the importers, in preparing the required customs entry, attached to the certified invoice a statement which constituted the importers' entered values and in which the unit value of one item was erroneously stated to be \$1.75 per "package." The calculations and extensions on the statement were based on a unit value of \$1.75 per "hundred packages."

Perpetuating the importers' error, the customs appraiser, on July 19, 1950, officially appraised the particular item of merchandise "as entered," that is, at the erroneous unit value per "package."

It is well settled that both entered and appraised values follow unit values and not total values. See *United States v. Kuttroff, Pickhardt & Co., Inc.* (Ct. Cust. Appls. 1919), T. D. 38204 (37 Treas. Dec. 232); *United States v. Woodward-Newhouse Co.* (Ct. Cust. Appls. 1922), T. D. 39100 (41 Treas. Dec. 266).

Prior to the Customs Simplification Act of 1953 (Public Law 243, 83d Cong.), which became effective September 7, 1953, there was no provision of law which permitted the administrative correction of a "clerical error" in the "appraisal" of imported merchandise. Administrative correction of "clerical errors" was limited by section 520 (c) (1) of the Tariff Act of 1930, as amended (19 U. S. C. 1520 (c) (1)), to such errors in any "entry or liquidation." Under the law then applicable, which must be applied to the instant case, where merchandise was entered at too high a value, or at an incorrect unit of value, and was appraised "as entered," the only possible method in law whereby the situation could have been corrected was for the importer to first successfully prosecute an appeal to reappraisal in the United States Customs Court to lower the appraised value, or to correct the unit of value, and to then establish to the satisfaction of the Bureau the existence of a "clerical error" in the entered value which could be corrected under the authority of section 520 (c) (1) of the tariff act then in force. The method of relief in the circumstances of this case is explained in detail in *Harry Glassberg v. United States* (1940), Reap. Dec. No. 5048 (5 Cust. Ct. 599).

In the instant case, no timely appeal for reappraisal was filed by the importers within 30 days after the appraisal and, therefore, pursuant to section 501 of the tariff act, as amended (19 U. S. C. 1501), the appraisal, although erroneous, has become "final and conclusive upon all parties." Pursuant to the provisions of section 503 (a) of the tariff act (19 U. S. C. 1503 (a)), customs duty must be assessed in the liquidation of the entry on the entered value or the final appraised value, whichever is higher, which in the instant case will be on the basis of a unit value per "package." In such liquidation of the entry, the importers will be assessed and billed for increased customs duty, since at the time of entry duty was deposited on the basis of a unit value per "hundred packages."

The Customs Simplification Act of 1953 amended section 520 (c) (1) of the tariff act to provide for the correction by the Secretary of the Treasury of certain clerical errors, mistakes of fact, or other inadvertences in an "appraisal." However, the amended provisions of section 520 (c) (1) may not be applied to the instant case because all rights and liabilities dependent upon the appraisal became fixed when the appraisal became final and conclusive on all parties under section 501 of the tariff act prior to the effective date of the Customs Simplification Act. Such fixed rights and liabilities were preserved by the savings clause in section 23 of the Customs Simplification Act. There is no provision of the Customs Simplification Act which authorizes its retroactive application to the instant case.

In its letter to you, Westfeldt Bros. contend that they were given no opportunity to prosecute an appeal for reappraisal since the merchandise was appraised at the entered value, and that the appraisal of the particular item at a unit value of \$1.75 per "package" was illegal because it was not accomplished pursuant to the provisions of section 500 of the tariff act (19 U. S. C. 1500).

The fact that goods are appraised at the entered value does not preclude the importer from filing and prosecuting an appeal to reappraisal. See *United States v. T. E. Ash et al.* (1939), Reap. Dec. 4601 (2 Cust. Ct. 1016); *Frank Brigham v. United States* (1947), Reap. Dec. 7285 (18 Cust. Ct. 625); *Herbert B. Moller v. United States* (1947), Reap. Dec. 7339 (19 Cust. Ct. 219); *American Askania Corporation v. United States* (1950), Abs. 54552 (25 Cust. Ct. 242).

Assuming, but not conceding, that the appraisal of the particular item in this case was illegal (voidable), once an appraisal has been completed, its legality may be challenged only by a timely appeal to reappraisal to the United States Customs Court. See *Gothic Watch Co. v. United States* (1947), Reap. Dec. 7438 (19 Cust. Ct. 309); *North American Mercantile Co. v. United States* (1948), Reap. Dec. 7524 (20 Cust. Ct. 372); *United States v. Gothic Watch Co.* (1949), Reap. Dec. 7712 (23 Cust. Ct. 235).

In view of the circumstances involved and the law which must be applied, the Bureau has no authority under which it could correct the error in the appraisal of the merchandise and, therefore, it is precluded, as a matter of law, from granting any administrative relief to the importers in connection with the increased customs duty, which will accrue upon liquidation of the entry.

The enclosure of your communication is returned.

Very truly yours,

(Signed) RALPH KELLY,
Commissioner of Customs.

WESTFELDT BROS.,
New Orleans, La., January 31, 1955.

Congressman HALE BOGGS,
House Building, Washington, D. C.

DEAR HALE: Along the lines of my conversation with you during the holidays in New Orleans, I give you below the facts of the customs entry about which we are having difficulties. The entry in question is warehouse entry 676 of October 3, 1945. This entry covered the following merchandise:

225 cases of candy rolls
200 cases of candy rolls
650 cases of mint wafers

There is no difficulty concerning the first 2 items mentioned above on this entry; the difficulty is in the shipment of 650 cases of mint wafers. The invoice showed a value of \$1.60 per 100 rolls for the 225-case lot, and \$1.75 per 100 for the 200-case lot mentioned above, and by a note attached to the invoice the value of both of these lots was brought up to \$1.75 per 100 rolls, on account of advances by the appraiser in similar cases. This valuation for both of these lots was found acceptable by the appraiser and, as stated above, there is no question or difficulty about these two lots.

The value shown on the invoice for the 650-case lot is \$1.75 per 100 packages. The description of the lot showed that each one of these cases contained 100 cartons of 24 packages each, therefore each case contained a total of 2,400 packages. The invoice value of this 650-case lot was \$1.75 per 100 packages, but, unfortunately, on the note attached to the invoice by us, the typist through error stated that the unit price of \$1.75 was per package and not per 100 packages, and this is where the trouble lies. The extension of the 650 cases at \$1.75 per 100 packages is correct and duties were paid accordingly. When the entry went to the Liquidating Department, the liquidator noticed that our note said \$1.75 per package instead of \$1.75 per 100 packages, and this runs the value of this particular shipment up to astronomical proportions. If the entry is liquidated at the value of \$1.75 per package, we are advised that the duties thereon will amount to \$540,539.75.

The appraiser at New Orleans has since notified the Bureau of Customs that it was his intention to appraise at the valuation of \$1.75 per 100 packages, but this has had no effect on the Bureau.

I feel certain that if the case went to court we could win, but, as explained to you, the amount of money involved is so large that it would be a terrifically costly proceeding.

Our principal contentions are as follows:

(1) We were given no opportunity to prosecute an appeal for reappraisement under the law then applicable, the appraiser having checked the appraised column on the summary sheet, thereby approving the importer's entered value.

(2) The universal trade practice at the time of this importation was to invoice this class of merchandise at a unit price per 100 packages and not at a unit price per package. Section 500 of the Tariff Act of 1930, as amended, reads in part as follows:

"A. Appraiser: It shall be the duty of the appraiser under such rules and regulations as the Secretary of the Treasury may prescribe: (1) To appraise the merchandise in the unit of quantity in which the merchandise is usually bought and sold, etc."

This is a law, not a regulation. We maintain that the appraiser did not appraise the merchandise in accordance with this statute and therefore the appraisement made was illegal and the merchandise should be reappraised on the unit value to conform to the above law.

Of course, if this entry had been made after the Customs Simplification Act of 1953, we would experience no difficulty and the reappraisement could be made. However, on account of the saving clause of this act, the Bureau maintains that this now cannot be done.

I do not know what you can do with the Bureau of Customs; they have consistently refused to entertain our plea, and also the plea of W. R. Zanes & Co. in a very similar case. The local customs officials have done everything possible to help us and are withholding liquidation of the entry at our request, but they seem to think that it will eventually come to the point where you will have to introduce special legislation to take care of our case and of Zanes' case. I spoke to you about Zanes' case and I am enclosing a letter addressed to you by them, setting forth the salient facts in their case, to which they have attached copies of correspondence they have had with the Bureau of Customs. I told them you did not want a complete file on either of our cases, and I am not sending you our complete file, but they thought it might be advisable to send you their file anyway.

It seems hard to believe that we should be subject to such a situation as this on account of a typographical omission when there is absolutely no intent to defraud the Government—to which all the local customs officials agree.

I am looking forward with deep interest to hearing from you, and with kindest regards, I am

Yours very truly,

W. O. WESTFELDT.

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